

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRANSPERFECT GLOBAL, INC. et al.,

No. 10-02590 CW

Plaintiffs,

v.

ORDER DENYING
DEFENDANT'S
MOTION TO
TRANSFER (Docket
No. 14)

MOTIONPOINT CORPORATION,

Defendant.

Defendant MotionPoint Corporation moves for a transfer of venue to the Southern District of Florida. Plaintiffs TransPerfect Global, Inc., TransPerfect Translations International, Inc., and Translations.com, Inc. (collectively, TransPerfect), oppose the motion. Having considered all of the papers filed by the parties, the Court denies the motion.

BACKGROUND

This action involves a patent infringement dispute in which Plaintiffs seek a declaratory judgment that Plaintiffs' GlobalLink OneLink technology (OneLink) does not infringe four patents assigned to Defendant. The four patents are United States Patent Nos. 7,580,960, 7,584,216, 7,627,479 and 7,627,817.

TransPerfect Global and Translations.com are incorporated in Delaware and have their principal places of business in New York.

1 TransPerfect Translations is incorporated in and has its principal
2 place of business in New York. Plaintiffs' OneLink product
3 provides translation services, whereby Plaintiffs' computers serve
4 as intermediaries between customer websites and internet users
5 seeking translated web content. Plaintiffs' OneLink operations are
6 based largely out of their offices in San Francisco and Cupertino,
7 California. From these offices, Plaintiffs' employees, including
8 OneLink's principal architect, Mark Hagerty, develop, sell and
9 support OneLink.

10 Defendant is a Florida corporation with its sole place of
11 business in Coconut Creek, Florida. Defendant is also in the
12 business of website translation services. All of Defendant's
13 research and development activities are conducted in Florida.
14 Defendant also distributes its products exclusively from Florida.
15 All inventors of Defendant's patents reside and work in Florida,
16 and all materials relating to those patents were created and are
17 stored in Florida. Defendant conducts business within the Northern
18 District of California.

19 Plaintiffs allege that between November, 2009 and April, 2010
20 Defendant intentionally told Plaintiffs' potential customers that
21 Plaintiffs were infringing Defendant's patents. On December 8,
22 2009, Defendant's counsel sent Plaintiffs a letter stating that
23 Defendant intended aggressively to enforce its intellectual
24 property rights. On July 11, 2010, after further correspondence,
25 Plaintiffs decided to file a complaint for declaratory judgment of
26 non-infringement and invalidity of Defendant's four patents. On

1 July 30, 2010, Defendant filed an answer, counterclaims, and this
2 motion to transfer venue to the Southern District of Florida.

3 LEGAL STANDARD

4 Title 28 U.S.C. § 1404(a) provides as follows: "For the
5 convenience of parties and witnesses, in the interest of justice, a
6 district court may transfer any civil action to any other district
7 or division where it might have been brought." Plaintiffs concede
8 that this action could have been brought in the Southern District
9 of Florida. Thus, the Court need only consider the convenience of
10 the parties and witnesses and the interest of justice.

11 In addition to the three factors identified in section
12 1404(a), the Ninth Circuit provides other factors the Court may
13 consider: ease of access to the evidence; familiarity of each forum
14 with the applicable law; feasibility of consolidation of other
15 claims; any local interest in the controversy; relative court
16 congestion and time to trial in each forum; location where the
17 relevant agreements were negotiated and executed; the parties'
18 contacts with the forum; difference in the costs of litigation in
19 the two forums; and availability of compulsory process to compel
20 attendance of unwilling non-party witnesses. Decker Coal Co. v.
21 Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986); Jones
22 v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000).

23 Another factor the Ninth Circuit has identified is the plaintiff's
24 choice of forum. Securities Investor Protection Corp. v. Vigman,
25 764 F.2d 1309, 1317 (9th Cir. 1985). The Securities Investor court
26 held that, unless the balance of the section 1404(a) factors "is
27 strongly in favor of the defendants, the plaintiff's choice of
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1 forum should rarely be disturbed." Id.; see also Decker Coal, 805
2 F.2d at 843 ("defendant must make a strong showing . . . to warrant
3 upsetting the plaintiff's choice of forum").

4 The burden is on the defendant to show that, of the relevant
5 factors, the balance of convenience weighs in favor of transfer to
6 another district. Commodity Futures Trading Comm'n v. Savage,
7 611 F.2d 270, 279 (9th Cir. 1979).

8 DISCUSSION

9 I. Plaintiffs' Choice of Forum

10 In spite of the strong presumption in favor of a plaintiff's
11 choice of forum, there are situations where a plaintiff's choice is
12 accorded little weight. Where a plaintiff chooses to litigate away
13 from home, deference to the plaintiff's choice of forum is
14 substantially reduced. Williams v. Bowman, 157 F. Supp. 2d 1103,
15 1106 (N.D. Cal. 2001). The deference accorded to a plaintiff's
16 choice is also diminished when the operative facts of a claim occur
17 outside the forum. Lou v. Blezberg, 844 F.2d 730, 739 (9th Cir.
18 1987). Here, Defendant contends that Plaintiffs' choice of forum
19 is entitled to minimal deference because Plaintiffs have chosen to
20 litigate away from home and none of the underlying facts occurred
21 in this district.

22 Defendant's claims are unavailing. Plaintiffs have two
23 offices in the district from which they market, sell, and deploy
24 OneLink. Additionally, the primary OneLink architect, Mark
25 Hagerty, resides in this district. Because this district is the
26 locus of Plaintiffs' OneLink operations some, if not all, of the

1 alleged infringement must have occurred in this district. Thus,
2 Plaintiffs' choice of forum warrants some deference.

3 Nevertheless, Plaintiffs are residents of Delaware and New
4 York, not California, which substantially reduces California's
5 interest in the case. Thus, Plaintiffs' choice of forum merits
6 some, but not substantial, deference.

7 II. Remaining Factors

8 Defendant contends that the balance of the other factors
9 outweighs any weight given to Plaintiffs' choice of forum.

10 A. Convenience of the Parties

11 It will be inconvenient for Defendant to litigate this matter
12 in this district. Defendant's only office, all its employees and
13 its officers are in southern Florida. All of the inventors of the
14 MotionPoint patents also live in southern Florida. The burden of
15 taking its employees and inventors away from work and to California
16 will inconvenience Defendant.

17 Defendant's claim, however, that it would be more convenient
18 for Plaintiffs to litigate in the Southern District of Florida
19 because TransPerfect is headquartered in New York is unavailing.
20 Plaintiffs' OneLink product is developed, deployed, and sold out of
21 Plaintiffs' northern California offices. The employees, inventors,
22 and officers with the greatest connection to OneLink live and work
23 in Northern California. It is these individuals, not employees in
24 TransPerfect's New York corporate department, who will be most
25 affected by this litigation. Thus, it would be just as
26 inconvenient for Plaintiffs to litigate in Florida as it would for
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1 Defendant to litigate in California. Transferring this case to the
2 Southern District of Florida would simply shift the inconvenience
3 of one party to the other party. See STX, Inc. v. Trik Stik, Inc.,
4 708 F. Supp. 1551, 1556 (N.D. Cal. 1988) ("If the gain of
5 convenience to one party is offset by the added inconvenience to
6 the other, the courts have denied transfer of the action.")

7 Defendant counters that, because Plaintiffs are financially
8 stronger than Defendant, litigating in this district would be more
9 inconvenient for Defendant than litigating in Florida would be for
10 Plaintiffs. The relative financial abilities of the parties is
11 generally not entitled to great weight. Brackett v. Hilton Hotels
12 Corp., 619 F. Supp. 2d 820, 820 (N.D. Cal. 2008). Moreover, the
13 financial abilities of the parties is more relevant where the
14 dispute is between an individual and a corporation. 800-Flowers,
15 Inc. v. Intercontinental Florist, Inc., 860 F. Supp. 128, 135
16 (S.D.N.Y. 1994). Here, the dispute is between two corporations and
17 the Court accordingly declines to give weight to the parties'
18 relative financial positions. This factor, therefore, weighs
19 against transfer.

20 B. Convenience of the Witnesses

21 The convenience of witnesses is often the most important factor
22 in deciding whether to transfer an action. Getz v. Boeing Co., 547
23 F. Supp. 2d 1080, 1083 (N.D. Cal. 2008). The convenience of
24 witnesses includes "a separate but related concern, the
25 availability of compulsory process to bring unwilling witnesses
26 live before the jury." Brackett, 619 F. Supp. 2d at 820.

1 Defendant identifies nine potential witnesses, all of whom
2 reside in the Southern District of Florida and are either employees
3 or officers of Defendant. The Court, however, discounts
4 inconvenience to the parties' employees, whom the parties can
5 compel to testify. STX, Inc., 708 F. Supp. at 1556 (discounting
6 inconvenience to witnesses when they are employees who can be
7 compelled to testify).

8 Plaintiffs have identified eighteen witnesses, who all reside
9 in California. Of those eighteen, ten are TransPerfect employees
10 or officers and eight are non-party witnesses. Defendant contests
11 the relevance of all eight non-party witnesses. Yet, Defendant
12 fails to identify any non-party witnesses that it intends to use.
13 Although not all of Plaintiff's non-party witnesses may testify at
14 trial, if this case were transferred to southern Florida, the court
15 there would be unable to compel any of the required non-party
16 witnesses to testify. Thus, this factor weighs against transfer.

17 C. Access to Evidence

18 The weight of this factor has decreased as technological
19 advances in document storage and retrieval have greatly reduced the
20 burden of transporting documents between districts. Brackett,
21 619 F. Supp. 2d at 820. Nonetheless, in patent infringement cases
22 "the bulk of the relevant evidence usually comes from the accused
23 infringer." In re Genentech, Inc., 566 F.3d 1338, 1346 (Fed. Cir.
24 2009). Accordingly, this factor weighs in favor of the accused
25 infringer's preferred forum. Id.

1 Here, Plaintiffs claim that the source code and other
2 documents relating to OneLink are housed in this district, which
3 tips the weight of this factor against transfer.

4 D. Parties' Contacts With the Forum

5 Both parties have contacts with both forums. Defendant's
6 contacts with the Southern District of Florida are more extensive
7 than its contacts with this district. The opposite is true as to
8 Plaintiffs' contacts with the two forums. Accordingly, this factor
9 is neutral.

10 E. Local Interest in the Controversy

11 Defendant argues that Florida has a greater interest in this
12 case because it resides in Florida, which has an interest in
13 providing legal redress to its citizens. Plaintiffs counter that
14 California has a strong interest in this dispute because
15 Defendant's allegations of infringement were purposefully directed
16 at its operations in California. Plaintiffs also argue that
17 California has an interest in protecting its consumers who have
18 allegedly been deterred from purchasing OneLink by Defendant's
19 accusations of infringement.

20 Florida has the greater interest in this dispute because the
21 case implicates the rights of a Florida resident. Because
22 Plaintiffs are not residents of California, its interest in this
23 controversy is reduced. This factor, therefore, weighs in favor of
24 transfer.

25 F. Difference in the Costs of Litigation in the Forums

26 Defendant claims that litigation in this district would be more
27 expensive than litigation in the Southern District of Florida due
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1 to travel costs and arranging for the attendance of witnesses from
2 Florida. Litigating at home would be more cost-effective for
3 Defendant, but it would not be less expensive overall. Although
4 Plaintiffs are headquartered in New York, its primary witnesses in
5 this dispute would be traveling from California. Therefore, a
6 transfer would merely shift the expense of traveling and arranging
7 for the attendance of witnesses to Plaintiffs. Thus, this factor
8 weighs against transfer.

9 G. Court Congestion

10 Defendant notes that the median time from filing a complaint to
11 trial is approximately sixteen months in the Southern District of
12 Florida and approximately twenty five months in this district. The
13 median time from filing a complaint to disposition in the Southern
14 District of Florida is approximately four months, versus
15 approximately nine months in this district.

16 Plaintiffs do not dispute that this district is more congested
17 than the Southern District of Florida. Rather, Plaintiffs point
18 out that court congestion should play a role in venue shifting
19 analysis only if the backlogs in the two courts are so totally
20 disproportionate that the time to trial would be radically longer
21 in the court initially selected by the plaintiff. Linear Tech.
22 Corp. v. Analog Devices, Inc., 1995 WL 225672, at *4 (N.D. Cal.).

23 Here, the backlogs are not totally disproportionate. Thus,
24 this factor does not weigh in favor of transfer.

1 H. Forum's Familiarity With the Applicable Law

2 This case is governed by federal patent law. Presumably, both
3 the Southern District of Florida and this district are equally
4 familiar with the governing law.

5 Plaintiffs argue, however, that this factor weighs against
6 transfer because this district has more experience with patent
7 cases, as evidenced by this district's patent local rules.
8 Plaintiffs claim that a primary reason for filing in this district
9 is the benefit of the patent local rules.

10 In ruling on motions to transfer, other district courts have
11 given weight to a forum's patent local rules and general experience
12 with patent cases. See, e.g., Convergence Tech. v. Microloops
13 Corp., ___ F. Supp. 2d ___, 2010 WL 1931743, at *12 (E.D. Va.
14 2010) (noting Northern District of California's well-earned
15 reputation as an experienced patent district). However, Defendant
16 notes that Plaintiffs may ask the Southern District of Florida
17 court to use this district's patent local rules in this case,
18 preserving any procedural convenience Plaintiffs would have gained
19 in this district. Therefore, this factor is neutral.

20 III. Balancing of Factors

21 The following factors weigh against transfer: Plaintiffs'
22 choice of forum; convenience of the parties; convenience of the
23 witnesses; access to evidence; difference in the costs of
24 litigation; and court congestion. The parties' contacts with the
25 forum and the forum's familiarity with the law are neutral factors.
26 The local interest in the controversy weighs in favor of transfer.
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1 Thus, even in light of the reduced deference accorded to
2 Plaintiffs' choice of forum, Defendant has failed to show that the
3 balance of inconveniences favors transfer to the Southern District
4 of Florida.

5 CONCLUSION

6 For the foregoing reasons, Defendant's Motion to Transfer
7 Venue is DENIED. (Docket No. 14.)

8 IT IS SO ORDERED.

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10 Dated: September 13, 2010



11 CLAUDIA WILKEN
12 United States District Judge
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